

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Group Art Unit 3744

In re

Patent Application of

Jony Zangari et al.

Serial No. 10/552,205

Filed: October 6, 2005

Confirmation No.: 6337

Examiner: Melvin Jones

"MODULAR REFRIGERATION UNIT"

I, Gina Howden, hereby certify that this correspondence is being filed electronically with the United States Patent and Trademark Office on the date of my signature.


Signature

5-11-2007
Date of Signature

PETITION UNDER 37 C.F.R. §1.182

Mail Stop Petition

Attn: Office of the Deputy Commissioner for Patent Examination Policy

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Sir:

Applicants file this petition under 37 C.F.R. §1.182 (Questions not specifically provided for) to have a Notice To File Missing Parts issued by the U.S. Patent and Trademark Office ("Patent Office") to enable Applicants to file a completed oath or declaration, or alternatively file a petition under 37 C.F.R. §1.47(b) (Filing when an inventor refuses to sign or cannot be reached).

Applicants believe they are entitled to this relief because the error of failing to file a completed declaration or the petition prior to the Notice of Allowance was unintentional and was a result of not receiving a Notice To File Missing Parts.

Please charge Deposit Account No. 13-3080 in the amount of \$400.00 in payment of the fee required under 37 C.F.R. §1.17(f).

This petition is essential to the Applicants, and a denial of this petition will likely result in lost U.S. patent rights.

I. Background

The application at issue stems from U.S. Provisional Patent Application No. 60/460,943 (the '943 Application), filed on April 7, 2003. On April 7, 2004, PCT Patent Application No. PCT/US2004/010577 was filed, and claimed priority to the '943 Application. Finally, on October 6, 2005, the present application was filed in conjunction with a preliminary amendment, and claimed priority to the '943 and PCT Applications.

A Declaration and Power of Attorney form ("Declaration") was submitted along with the filing of the present application, and included signatures from four of the five inventors. The signature of the remaining inventor, Raul Gutierrez, was not obtained because Raul Gutierrez refused to sign the Declaration, and could not be reached.

During prosecution of the present application, Applicants began preparation of a petition under 37 C.F.R. §1.47(b) to account for the missing signature of Raul Gutierrez. Before Applicants could file the petition under 37 C.F.R. §1.47(b), Applicants received a Notice of Allowance (dated February 12, 2007). However, the Patent Office failed to issue a Notice To File Missing Parts due to the omission of Raul Gutierrez' signature from the Declaration prior to the Notice of Allowance.

II. Discussion

Although the Patent Office provides a remedy for an inventor who refuses to sign a Declaration or whom cannot be reached (see 37 C.F.R. §1.47(b)), the Patent Office rules do not specifically provide a remedy for issuance of a Notice of Allowance without issuance of a Notice To File Missing Parts for an incomplete declaration caused by an inventor who refuses to sign a Declaration or whom cannot be reached.

37 C.F.R. §1.53(b) provides that "[t]he filing date of an application for patent filed under this section . . . is the date on which a specification as prescribed by 35 U.S.C. §112 containing a description pursuant to §1.71 and at least one claim pursuant to §1.75, and any drawing required by §1.81(a) are filed in the Patent and Trademark Office."

In summary, to be accorded a filing date, the filed application must include specification, at least one claim, and drawings. Applicants respectfully submit that they have met the requirements of 37 C.F.R. §1.53(b) because the present application was filed with a complete specification, at least one claim, and drawings. As such, the present application should be accorded the appropriate filing date.

37 C.F.R. §1.53(f) provides that "[i]f an application which has been accorded a filing date . . . does not include an oath or declaration by the applicant pursuant to §§ 1.63 . . . and applicant has provided a correspondence address (§1.33(a)), applicant will be notified and given a period of time within which to . . . file an oath or declaration in an application under paragraph (b) of this section, and pay the surcharge if required by §1.16(f) to avoid abandonment." (Emphasis added).

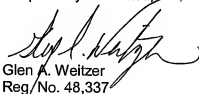
Applicants respectfully submit that they were not notified and given a period of time to file a completed Declaration, and that Applicants failure to file a completed Declaration is deserving of a remedy due to the failure of a Notice To File Missing Parts being issued to Applicants prior to issuance of the Notice of Allowance.

III. Relief Requested

By way of this petition, Applicants respectfully request that the Patent Office accord the present application with the appropriate filing date. Applicants further respectfully request that the Patent Office issue a Notice To File Missing Parts to allow Applicants to file a completed oath or declaration, or alternatively file a petition under 37 C.F.R. §1.47(b). Applicants believe they are entitled to this relief because they have submitted a completed application, and the failure to file a completed Declaration or a petition under 37 C.F.R. §1.47(b) prior to receiving the Notice of Allowance was unintentional due to Applicants not receiving a Notice To File Missing Parts.

In the event any additional information is needed or if the Office has any questions regarding this Petition, please call the undersigned Applicant's Representative.

Respectfully submitted,



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